

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

J.H. Reid General Contractor and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International (USW), AFL-CIO, CLC and its Local 15024. Case 22-CA-199736

June 7, 2018

DECISION AND ORDER

BY MEMBERS PEARCE, KAPLAN, AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the amended complaint. Upon a charge filed by the Union on May 30, 2017, and amended charges filed by the Union on August 14, 2017, August 31, 2017, September 27, 2017, and January 3, 2018, the General Counsel issued a complaint on November 29, 2017, and an amended complaint on January 30, 2018, against J.H. Reid General Contractor, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge, amended charges, complaint, and amended complaint, the Respondent failed to file an answer.

On March 23, 2018, the General Counsel filed a Motion for Default Judgment with the Board. On March 28, 2018, the Board issued an Order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the amended complaint affirmatively states that the answer must be received by the Regional Office on or before February 13, 2018, and that if no answer is filed, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion for default judgment disclose that the Region, by letter dated February 14, 2018, sua sponte granted the Respondent an extension of time to file an answer until February 21, 2018. In addition, the Region notified the Respondent that unless an answer was re-

ceived by February 21, 2018, a motion for default judgment would be filed. No answer or request for an extension of time to file an answer was received by that date.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business at 3230 Hamilton Boulevard, South Plainfield, New Jersey, has been engaged in heavy highway construction. During the 12-month period preceding the issuance of the amended complaint, a representative period, the Respondent, in the course of conducting its business operations described above, purchased and received at its facility in South Plainfield, New Jersey, goods valued in excess of \$50,000 directly from points outside the State of New Jersey.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International (USW), AFL-CIO, CLC and its Local 15024, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, James H. Reid has been the Respondent's President and has been an agent of the Respondent within the meaning of Section 2(13) of the Act and a supervisor of the Respondent within the meaning of Section 2(11) of the Act.

At all material times, Eric Reid has been a principal of the Respondent and has been an agent of the Respondent within the meaning of Section 2(13) of the Act and a supervisor of the Respondent within the meaning of Section 2(11) of the Act.

The following employees of the Respondent, the unit, constitute an appropriate unit for collective bargaining within the meaning of Section 9(b) of the Act:

All employees in the classifications covered by the 2016-2018 collective bargaining agreement engaged in the construction, maintenance, support, recycling or allied operations historically performed by the employer prior to February 24, 1994; and all persons employed by the contractor in the performance of such work in those geographic areas related as closely as practicable to the states in which the employer has worked or controlled the assignment of work prior to February 24,

1994. Excluded from the bargaining unit are engineering staff, clerical employees, watchmen, timekeepers, superintendents, master mechanics, assistant superintendents, general foremen, foremen or other supervisors having the right to hire, fire or discipline or effectively recommend such action.

Since at least 1996 and at all material times, the Union has been the exclusive collective-bargaining representative of the unit employed by the Respondent and during that time the Union has been recognized as such representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from January 1, 2016, through December 31, 2018.

At all material times since about 1996, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Articles 11 and 14 of the collective-bargaining agreement require the Respondent to make monthly contributions to the Health, Welfare, Life and Dental Benefits Program or to provide an equivalent plan for employees covered by the collective-bargaining agreement.

Beginning in about February 2017, the Respondent ceased making contributions to the Health, Welfare, Life and Dental Benefits Program for the employees covered by the collective-bargaining agreement and has not offered employees an equivalent plan.

Articles 13 and 14 of the collective-bargaining agreement require the Respondent to make monthly contributions to the Apprenticeship and Training Trust Fund on behalf of the employees covered by the collective-bargaining agreement.

Beginning in at least November 2016, the Respondent ceased making contributions to the Apprenticeship and Training Trust Fund for the employees covered by the collective-bargaining agreement.

Article 12 of the collective-bargaining agreement requires the Respondent to deduct from employee paychecks dues if authorized by employees. The Article further requires the Respondent to remit such dues to the Union.

Since at least November 2016, the Respondent has collected dues from employee paychecks but failed to remit these to the Union.

Article 12 of the collective-bargaining agreement requires the Respondent to contribute to a deferred compensation plan per employee hours worked.

Since about December 2016, the Respondent has failed to contribute to a deferred compensation plan, described above.

The subjects set forth above relate to wages and hours and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

The Respondent engaged in the conduct described above without the Union's consent.

On about July 12, 2017, in response to the Respondent's request for a payment plan for delinquent benefit contributions and its failure to remit dues, the Union requested that it provide the following information, for the period from January 1, 2016 to date:

1. The location of the projects on which the Employer is working and has worked;
2. Whether any such work is private, i.e. would be subject to the wage scale in the collective-bargaining agreement;
3. Whether any of the work is Davis-Bacon (as opposed to New Jersey Prevailing wage);
4. The hours each employee worked in each classification.

The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

The Respondent has failed and refused to fully furnish the Union with the requested information.

On about November 22, 2017, the Union, by letter, requested that the Respondent furnish the Union with certain information about the Respondent, J.H. Reid On-Site Recycling, Inc., and TDE Services, Inc., including certain terms and conditions of employment and the relationship among the three companies.

The information requested by the Union, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

The Respondent has failed and refused to fully furnish the Union with the requested information.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(5) and (1) of the Act. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and

desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a) (5) and (1) of the Act by failing to remit to the Union dues deducted since November 2016 from unit employees' paychecks pursuant to a duly executed and unrevoked authorizations by unit employees, in contravention of Article 12 of the collective-bargaining agreement we shall order the Respondent to remit such withheld dues to the Union as required by the collective-bargaining agreement, with interest, as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

Having found that the Respondent repudiated its obligation under the 2016–2018 collective-bargaining agreement in violation of Section 8(a)(5) and (1) by ceasing since February 2017 to make monthly contributions to the Health, Welfare, Life and Dental Benefits Program or to provide an equivalent plan; by ceasing since November 2016 to make contributions to the Apprenticeship and Training Trust Fund; and by failing since December 2016 to contribute to a deferred compensation plan, as required by the 2016–2018 collective-bargaining agreement, we shall order the Respondent to rescind its actions and to make whole its unit employees by making all such delinquent fund contributions on behalf of unit employees that have not been made since the dates above, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

Further, the Respondent shall be required to reimburse unit employees for any expenses ensuing from its failure to make the required fund contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891, 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981). Such amounts should be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.¹

Finally, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to furnish the Union with relevant and necessary information, we shall order the Respondent to provide the Union with the information requested on July 12 and November 22, 2017.

¹ To the extent that an employee has made personal contributions to a benefit or other fund that has been accepted by the fund in lieu of the Respondent's delinquent contributions to the funds during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to any amount that the Respondent otherwise owes the funds.

ORDER

The National Labor Relations Board orders that the Respondent, J.H. Reid General Contractor, South Plainfield, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International (USW), AFL–CIO, CLC and its Local 15024, as the exclusive collective-bargaining representative of the following unit:

All employees in the classifications covered by the 2016–2018 collective bargaining agreement engaged in the construction, maintenance, support, recycling or allied operations historically performed by the employer prior to February 24, 1994; and all persons employed by the contractor in the performance of such work in those geographic areas related as closely as practicable to the states in which the employer has worked or controlled the assignment of work prior to February 24, 1994. Excluded from the bargaining unit are engineering staff, clerical employees, watchmen, timekeepers, superintendents, master mechanics, assistant superintendents, general foremen, foremen or other supervisors having the right to hire, fire or discipline or effectively recommend such action.

(b) Failing and refusing to make contributions to the Health, Welfare, Life and Dental Benefits Program or providing an equivalent plan for unit employees as required by its collective-bargaining agreement with the Union.

(c) Failing and refusing to make contributions to the Apprenticeship and Training Trust Fund as required by its collective-bargaining agreement with the Union.

(d) Failing and refusing to make contributions to a deferred compensation plan as required by its collective-bargaining agreement with the Union.

(e) Failing and refusing to remit to the Union dues deducted from unit employees' paychecks pursuant to duly executed and unrevoked authorizations by the unit employees, as required by its collective-bargaining agreement with the Union.

(f) Refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of the Respondent's unit employees.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Continue in effect all the terms and conditions of employment contained in its 2016–2018 collective-bargaining agreement with the Union.

(b) Make all contractually required contributions to the unit employees' Health, Welfare, Life and Dental Benefits Program that have not been made since February 2017, and continue to make those contractually required contributions, or provide an equivalent plan, and make the unit employees whole for any expenses ensuing from their failure to make such payments or provide such plan, including any additional amounts due on behalf of unit employees, with interest, in the manner set forth in the remedy section of this decision.

(c) Make all contractually required contributions to the unit employees' Apprenticeship and Training Trust Fund that have not been made since November 2016, and make the unit employees whole for any expenses ensuing from their failure to make such payments, including any additional amounts due to the funds on behalf of unit employees, with interest, in the manner set forth in the remedy section of this decision.

(d) Make all contractually required contributions to the unit employees' deferred compensation plan that have not been made since December 2016, and make the unit employees whole for any expenses ensuing from their failure to make such payments, including any additional amounts due to the funds on behalf of unit employees, with interest, in the manner set forth in the remedy section of this decision.

(e) Remit to the Union dues that were deducted from unit employees' paychecks since November 2016, pursuant to duly executed and unrevoked authorizations and that were not remitted, as required by the collective-bargaining agreement with the Union, with interest, in the manner set forth in the remedy section of this decision.

(f) Furnish to the Union in a timely manner the information requested on July 12 and November 22, 2017.

(g) Within 14 days after service by the Region, post at its facility in South Plainfield, New Jersey, copies of the attached notice marked "Appendix."² Copies of the no-

tice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 2016.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 22 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 7, 2018

Mark Gaston Pearce, Member

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International (USW), AFL-CIO, CLC and its Local 15024 (the Union), as the exclusive collective-bargaining representative of the following unit:

All employees in the classifications covered by the 2016-2018 collective bargaining agreement engaged in the construction, maintenance, support, recycling or allied operations historically performed by the employer prior to February 24, 1994; and all persons employed by the contractor in the performance of such work in those geographic areas related as closely as practicable to the states in which the employer has worked or controlled the assignment of work prior to February 24, 1994. Excluded from the bargaining unit are engineering staff, clerical employees, watchmen, timekeepers, superintendents, master mechanics, assistant superintendents, general foremen, foremen or other supervisors having the right to hire, fire or discipline or effectively recommend such action.

WE WILL NOT fail and refuse to make contributions to the Health, Welfare, Life and Dental Benefits Program or provide an equivalent plan for our unit employees as required by our collective-bargaining agreement with the Union.

WE WILL NOT fail and refuse to make contributions to the Apprenticeship and Training Trust Fund as required by our collective-bargaining agreement with the Union.

WE WILL NOT fail and refuse to make contributions to a deferred compensation plan as required by our collective-bargaining agreement with the Union.

WE WILL NOT fail and refuse to remit to the Union dues deducted from unit employees' paychecks pursuant to duly executed and unrevoked authorizations by the unit employees, as required by our collective-bargaining agreement with the Union.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL continue in effect all the terms and conditions of employment contained in our 2016-2018 collective-bargaining agreement with the Union.

WE WILL make all contractually required contributions to the unit employees' Health, Welfare, Life and Dental Benefits Program that have not been made since February 2017, and continue to make those contractually required contributions, or provide an equivalent plan, and make the unit employees whole for any expenses ensuing from our failure to make such payments or provide such plan, including any additional amounts due on behalf of unit employees, with interest.

WE WILL make all contractually required contributions to the unit employees' Apprenticeship and Training Trust Fund that have not been made since November 2016, and make the unit employees whole for any expenses ensuing from our failure to make such payments, including any additional amounts due to the funds on behalf of unit employees, with interest.

WE WILL make all contractually required contributions to the unit employees' deferred compensation plan that have not been made since December 2016, and make the unit employees whole for any expenses ensuing from our failure to make such payments, including any additional amounts due to the funds on behalf of unit employees, with interest.

WE WILL remit to the Union dues that were deducted from unit employees' paychecks since November 2016, pursuant to duly executed and unrevoked authorizations and that were not remitted, as required by our collective-bargaining agreement with the Union, with interest, in the manner set forth in the remedy section of this decision.

WE WILL furnish to the Union in a timely manner the information requested on July 12 and November 22, 2017.

J.H. REID GENERAL CONTRACTOR

The Board's decision can be found at www.nlr.gov/case/22-CA-199736 or by using the QR code below. Alternatively, you can obtain a copy of the

decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

